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The Pennsylvania-Maryland Boundary Controversy

BY

CHARLES C. TANSILL, A. B., A. M.

A DISSERTATION

Submitted to the Faculty of Philosophy of the Catholic University of America in Partial Fulfillment of Its Requirements for the Degree of Doctor of Philosophy

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INTRODUCTION.

Generally an investigator engaged upon a special topic discovers a vast amount of material written upon the very subject in which he is interested. Many of his conclusions will be anticipated, so that often his task will be merely a restatement of facts, or perhaps, a new interpretation of historical documents. In the present dissertation, the author has endeavored to present a clear account of the Pennsylvania-Maryland Boundary Controversy, one of the most complicated in American colonial history, and a subject which in his opinion has never been scientifically examined.

By a patent of 1632, King Charles I granted to Cecilius Calvert, second Baron Baltimore, a tract of land in the region of Chesapeake Bay. It was bounded on the south by "a Right line drawn from the promontory called Watkins Point unto the Main Ocean on the East, and between that boundary on the south unto that part of the Bay of Delaware on the North, which lyeth under the Fortieth Degree of North Latitude;" thence "by a Right Line unto the meridian of the first fountain of the River of Pattowmack."[1]

It will be seen that this grant included not only the present State of Maryland, but the whole of Delaware as well as a considerable part of Pennsylvania. In other words, all that section of Pennsylvania below the fortieth parallel was embraced in the original province of Maryland. Nearly half a century later, March 4, 1681, William Penn received from King Charles II a grant of territory extending from the northern boundary of Maryland to the forty-second degree of north latitude. The purpose of the present inquiry is to determine how the Calverts lost, and how the Penns acquired Delaware and the very important part of Pennsylvania below the fortieth parallel,

[1] Macdonald *Select Charters*, p. 55.

which falls just above the city of Philadelphia. It will also examine the status of those Dutch settlements established on territory claimed by England; discuss a mysterious map, which did efficient service for early Pennsylvania; and investigate the character of William Penn, the celebrated Quaker leader.

The first point in this boundary controversy that requires discussion is the argument advanced by the Penns relative to the phrase "hactenus inculta," which was contained in the preamble of the Maryland charter. All the early colonial charters expressly excepted from colonization any lands already in the possession of Christian princes. In the Virginia charter of 1606, England merely claimed the territory lying between the thirty-fourth and forty-fifth parallels of north latitude. That is to say, immigrants to the New World could not settle below the thirty-fourth parallel. All territory south of that line belonged to Spain by right of prior discovery and occupation, and the jurisdiction of the Spanish sovereign was duly respected.

But the Dutch government refused to admit the English claims to the territory included in the two patents of James I, namely, that of 1606 and that of 1609, and as early as 1610 Dutch traders began to frequent the Hudson. By 1620, they had established trading booths on Manhattan Island, for in that year they were warned by an English trader, Captain Dermer, "not to trespass on English territory."[2]

In 1621, Sir Dudley Carlton, the English minister at The Hague, by order of Sir George Calvert, then Secretary of State, complained to the Dutch government of the presence of Dutch settlers on the Hudson and the Delaware. In reply, he was informed that "there was no plantation to impeach the English right."[3] In other words, the Dutch disclaimed all knowledge of the exis-

[2] Channing, *Hist. of the U. S.* Vol. 1, pp. 443–445.
[3] Channing, *Hist. of the U. S.* Vol. 1, note, p. 445.

tence of any permanent settlement in the region of the Hudson. Subsequently, Carlton was directed to require the Dutch to discontinue the plantation; but the government at The Hague assured him "that only fur traders were on the Hudson."[4]

In 1632, the Council for New England caused the detention of the Dutch ship *Eendragt,* and in answer to the protest of the Dutch ministers, Charles I pithily observed that "permission" would be extended to Dutch settlers only on condition that they would submit themselves as subjects to his Majesty's government."[5]

But notwithstanding this clear proof of the attitude of the English government in 1632 toward the Dutch settlements, William Penn, as we shall see, maintained that Charles I wished to respect the Dutch claim to Delaware, and that the phrase "hitherto uncultivated" excluded from Baltimore's patent all the territory actually covered by Dutch plantations.

It has been the purpose of the writer carefully to examine this argument based upon the phrase "hitherto uncultivated," and clearly to present the real attitude of Charles I in regard to the Dutch claim. This inquiry has been suggested by the confident opinions expressed by nearly all Pennsylvania historians who have treated this subject. In his *History of Pennsylvania* (1797), Robert Proud, the first to support Penn's claims to Delaware, asserts that the phrase "hitherto uncultivated" was intended to exclude from Baltimore's patent any Dutch settlements that may have been planted before 1632. Proud has been faithfully followed by subsequent historians, and as late as 1896, Sydney G. Fisher observes that "the Dutch had been in possession of the shores of Delaware Bay for ten years before Lord Baltimore's charter was issued, and his boundaries in that direction

[4] Channing, *Hist. of the U. S.* Vol. 1, note, p. 446.
[5] Brodhead, *Hist. of New York.* Vol. 1, p. 216.

were evidently defective.''[6] Such statements appear to proceed either from a willful blindness, or a hasty interpretation of historical documents.

But this is only one illustration of the liability of historians to overlook, or not sufficiently to emphasize familiar facts. Penn's acquisition of the Lower Counties through deeds of enfeoffment from the Duke of York, when, as a matter of fact, that nobleman possessed no legal title thereto, has been defended by many writers as a perfectly lawful transaction. Again, the activity of William Penn in influencing in 1685 the decision of the Committee of Council, has found champions who refer to it as a measure of vital importance to the future development of Pennsylvania.

Indeed, even the obscure agreement of 1732, whereby the Penns deprived Baltimore of a considerable part of his province, has been explained to the satisfaction of the biographers of Penn. They hold that the map, which appears to have been a forgery, prefixed to the agreement of 1732, was produced by Charles Calvert himself, and that he was liable for his own negligence. Although this question will be more fully examined in a succeeding chapter, it might be useful at this point to inform the reader that after an examination of this map, he will probably think that startling properties were possessed by a certain headland named Cape Henlopen, which, like the cuckoo's call, was at once both near and far.

In 1733, Charles Calvert, fifth Baron Baltimore, visited Maryland, and on being informed of the sinister conduct of the Penns, refused to carry out the agreement he had made in the previous year. The heirs of William Penn immediately brought suit in a court of equity to compel the specific performance of the contract, but, it was not until 1750 that a decision was rendered by Lord Hardwicke. After calling attention to the efforts of Calvert to evade the agreement of 1732, this jurist dwells at

[6] Fisher, *Making of Pennsylvania*, p. 325.

length upon the expense incurred by the Penns in the settlement of the Lower Counties. He then ordered the articles of agreement to be fulfilled, and directed that Baltimore pay the entire cost of the suit as ascertained by a master in chancery. In 1767, the northern boundary of Maryland was fixed at 39° 44′, and extended westward 230 miles from the tangent line. In 1769, an Order in Council confirmed this settlement, and brought to a close one of the most protracted boundary controversies in our colonial histry.

Perhaps the most judicious account of this boundary controversy may be found in J. V. L. McMahon's *Historical View of Maryland* (1831). Though written early in the nineteenth century, his work is accurate and scholarly, and has served as a foundation for all subsequent treatises on the history of that State.

An important document dealing with this boundary dispute is the Bill in Equity filed by the Penns to compel the specific performance of the agreement made in 1732 with Charles Calvert (fifth Baron Baltimore). This bill, which is a complete history of the controversy, is printed in Vol. 16 of the *Pennsylvania Archives,* and is an admirable presentation of the claims made by the Penns.

The *Dismemberment of Maryland* (1890), written by William Archer, is a spirited defense of the Calverts, and exhibits an extreme rancor towards the founder of Pennsylvania. It is, however, the most exhaustive presentation of the Maryland side, and though marred by a strain of facetiousness, shows a thorough knowledge of the Maryland archives. But there is one question that appears to perplex the Maryland historian; namely, the origin of the twelve-mile circle drawn about Newcastle "Northwards and Westward unto the beginning of the fortieth degree of Northerne Latitude." After discussing the obscurity of the language of the Pennsylvania charter, Mr. Archer observes that the three words, "the beginning of" the fortieth degree, were "either inserted

by some honest, though officious, blunderer, or subsequently interpolated by some sharp knave, with the deliberate design of rendering the terms of the charter ambiguous, in order to serve some unworthy purpose, afterwards to be carried out. If, however, some one can better explain this absurd stumbling block in Penn's charter, I shall cheerfully accept the solution.''[7]

It is clearly shown by the correspondence of Sir John Werden, secretary to the Duke of York, that Penn himself thought the fortieth parallel was located about twelve miles to the north of Newcastle, and probably it was at Penn's suggestion that the twelve-mile circle was drawn about that town. Now the thirty-ninth parallel, or technically ''the beginning'' of the fortieth degree of north latitude, crosses Maryland a few miles to the north of the city of Washington, and its exact location was indicated on contemporary charts. To suppose, as many Pennsylvania historians would have us do, that the twelve-mile circle was drawn to intersect a parallel in the latitude of Washington, is inconceivable. This supposition would limit Baltimore to one degree of latitude, while Penn himself, before his relations with Calvert became strained, considered the Maryland charter to contain at least two degrees. The circle, then, appears to have proceeded from Penn's suggestion, and was drawn as a safeguard to the Duke of York's Newcastle province.

The most scholarly exposition of this intricate subject is to be found in Shepherd's *Proprietary Government in Pennsylvania* (1896). The important facts of the controversy are impartially stated, and the legal aspects of the whole question carefully reviewed.

But most accounts of this dispute have been marked by prejudice. It has been the purpose of the author to develop certain points merely touched upon in previous studies, and also to present some phases of this contro-

[7] *Maryland Fund Publications*, No. 30, p. 39.

versy from a new angle. Hitherto, the argument based upon the descriptive phrase *hactenus inculta,* has not been sufficiently examined by Maryland historians. Again, in the treatment of the character of William Penn, most of his biographers have been willfully blind.

Finally, it must be said that the Calendar of English State Papers has proved invaluable, and that the present study has been principally based upon the documents found therein.

CHAPTER I

CHARLES CALVERT AND WILLIAM PENN

It is evident that any dissertation discussing the Pennsylvania-Maryland Boundary Controversy, should be prefaced by a brief account of the lives and personal relations of the respective proprietors, William Penn and Charles Calvert, third Baron Baltimore.

Of Charles Calvert but little is known. His grandfather, George Calvert, the first Baron Baltimore, attained to a high position at the court of James I, and though he retired from public life at the accession of Charles I, his withdrawal was purely from preference; certainly it was not, as has been insinuated by some historians, from suggestion.[8]

From the very beginning, the first Baron Baltimore had taken an active interest in colonization. He subscribed to two shares in the London Company, and after the revocation of the Virginia charter in 1624, he was appointed one of the provisional council for the management of the affairs of that colony. He was also one of the eighteen councillors of the New England Company, and in general displayed a spirit of enterprise in all colonial ventures.

The charters granted to the Virginia Company (1606), and to the Council for New England (1620), had conveyed all the territory from the Cape Fear River to Nova Scotia, so George Calvert in his quest for a suitable tract for colonization, finally decided to try his experiment upon the island of Newfoundland. In 1620, he purchased a plantation on that island, and, moved by pious tradition, named it Avalon. He then sent out a number of colonists under a Captain Wynne, who reported that the "salt works were promising," and that the "fishery was the finest in the world."

[8] Channing, *Hist. of the U. S.* Vol. I, p. 241.

The reports of Wynne were more than confirmed by Captain Richard Whitbourne, who, in 1622, published a remarkable pamphlet entitled, "Westward Hoe for Avalon." Whitbourne must have been an ardent admirer of the facile discourse of that interesting traveler, John Mandeville. Newfoundland, as described in the glowing pages of this second "Westward Hoe," is a sort of Florida, an earthly paradise. "Red and damask roses" perfume the balmy air, while strawberries, raspberries, pears and cherries may be found in abundance. Nightingales fill the peaceful groves with liquid song; the wild beasts are strangely tame, and he gravely assures his readers that in St. John's harbor he distinctly saw a mermaid. Whether the last observation is mentioned by way of a further inducement to possible colonists, is not sufficiently clear.

Baltimore, enchanted with the prospect portrayed in the narrative of Whitbourne, and throwing to the winds the caution that should have been inspired by the mysterious fate of the Roanoke colony, and the "Starving Time" at Jamestown, decided to plant a large colony on the southeastern peninsula of Newfoundland. On April 7, 1623, a royal charter was issued to Calvert, creating him lord proprietor of Avalon with the same rights and privileges as were enjoyed by the Bishop of Durham. Shortly afterward he despatched a large body of settlers, and the colonization of Newfoundland was begun in earnest.

The fate of the colony at Avalon may be told in a few words. The opposition of the Puritans, the hostility of the French, and the severity of the climate soon convinced Calvert that success must be sought in another quarter; therefore, he petitioned the King for territory situated in a more temperate climate. In the meantime, he sailed with his family and friends for Jamestown. Their cold reception by their countrymen in Virginia, and their departure for England are among the most

familiar incidents in early American history. On his arrival in England, Calvert in person pressed his application upon King Charles I, and, as will presently appear, with perfect success. However, before considering this subject it may be well, for the purpose of clearness, briefly to notice a few related facts in the earlier annals of the struggling colony of Virginia.

As is well known, the years between 1583 and 1606 were marked by many English attempts to colonize America. In this place the failures of that era need not be enumerated. Yet these years of discouragement and even of disaster were not entirely barren, for the race destined to control America was slowly acquiring experience. It was during 1606 that there was organized in England a company for colonizing the New World. This corporation had a branch in London, and one in Plymouth. For the moment it is in the fortunes of the former that we are interested.

Accompanied by one of the patentees, Edward-Maria Wingfield, and during their voyage under the command of Sir Christopher Newport, a band of 120 Englishmen sailed for Virginia. The tragic story that filled the years from 1607 to 1625 need not detain us. By the charter of 1609, the London branch of the corporation was empowered to make settlements along the coast from Point Comfort northward for a distance of 200 miles, and southward from the same cape for an equal distance. Three years later a third charter was granted to the Virginia Company. This instrument not only provided for the incorporation of the Bermudas, but its liberal provisions made possible the introduction of representative government into Virginia. It is not necessary to recount the dissensions that arose within the company itself, the opposition of King James I, or the revocation of the charter in 1624. These facts are familiar.

But even after the vacation of the charter, there was a strong party in England, and in the colony itself, that

hoped to obtain a new one. Therefore, any petitioner who asked for lands included within the boundaries granted by the Virginia charters of 1609 and 1612, was regarded with feelings of suspicion and even of hatred.

Charles I, acting upon the petition of George Calvert, granted him the territory lying between the James River and the thirty-sixth parallel. This grant, however, evoked so violent a storm of protest from the members of the defunct Virginia Company, that Calvert executed a release, and in 1632, received a new grant for lands north of Virginia. The boundaries, as expressed in this instrument, extended from the mouth of the Potomac to the fortieth parallel; along that parallel to the meridian that passes through the most westerly fountain of the Potomac; thence along the southern bank of that river to its mouth. Thus it is apparent that the present State of Delaware, and a considerable part of Pennsylvania, lay within the boundaries given in the charter of 1632. But before the charter passed the seals, George Calvert had died, and the instrument was made out in favor of Cecilius Calvert, eldest son of the deceased, and the second Baron Baltimore.

The character of the new proprietor is best revealed in his admirable administration of his province. Prudent, far-seeing, tactful and eminently just, Cecilius Calvert may be reckoned one of the noblest of American colonizers. And this is no small honor when one remembers that some of the most illustrious characters in England were actively engaged in planting colonies beyond the western seas. Indeed, as Elson aptly observes: "One may search in vain through all our colonial history for a ruler superior to Cecilius Calvert."[9]

Charles Calvert, in whose proprietorship originated the controversy we are about to discuss, arrived in Maryland during the year 1661. In 1675, upon the death of his father, Charles became resident proprietor of Maryland,

[9] Elson, *Hist. of the U. S.*, p. 79.

thereby securing to the province an advantage enjoyed by but few of the English colonies. During his long incumbency of some forty years, he exhibited nearly all the traits of character that had distinguished his father and his grandfather, and the fact that the quit-rent system reached its highest development in Maryland, is a sufficient illustration of the regard entertained for him, as well as a proof of the general prosperity of his province.

But Charles has not been without his critics. Mereness considers him "cold and self-centered,"[10] though this charge hardly seems supported by the proceedings of the Maryland Assembly, for on one occasion when they voted Calvert a gift of 100,000 pounds of tobacco as an expression of "gratitude" and an appreciation of his "benign administration," the Proprietor declined the donation on the ground that it would impose extra burdens upon the taxpayers.

A prominent Maryland Historian gives, perhaps, the best analysis of the character of the second lord Proprietor. "We recognize in him," says Hall, "a fair and just man, but one lacking in many respects the largeness of view and conciliatory disposition by which his father was distinguished. His administration of the affairs of the province, though sometimes arbitrary, was eminently humane, and those who sought a panacea of all ills by the overthrow of his government, had yet to learn, like the malcontents of old who demanded a king rule over them, that a royal yoke is not always easy."[11]

When we consider the other Proprietor who was involved in this controversy, we come to one of the most famous characters in American colonial history —William Penn. His father, Admiral Sir William Penn, had entered the royal navy at an early age, and when he had attained to his thirty-first year, was appointed Vice-Admiral of England. The immediate desire of his heart

[10] *Maryland as a Proprietary Province*, p. 33.
[11] *The Lords Baltimore and the Maryland Palatinate*, p. 128.

was to elevate the social standing of his family, so his son, William, was sent to Oxford to acquire some useful knowledge, and better still, to form valuable acquaintanceships.

While at college, the younger Penn chanced to attend a meeting presided over by a Quaker, Thomas Loe, and the new teachings made an indelible impression upon the plastic mind of the future proprietor of Pennsylvania. At that time Oxford was strictly orthodox, and Penn was soon dismissed for non-conformity. Upon his return home, his irate father refused him admittance; then, thinking that travel might efface these foolish first impressions, he sent his son on a pleasure trip to the continent.

After his return from his travels, Penn began the study of law. But the Admiral soon detected signs of unwonted seriousness in one so young, and fearing a return of the influence of Quaker principles, he sent his son in 1666 to administer some estates in Ireland. The gay life at the court of the Duke of Ormond, then Lord Lieutenant, seemed to have the desired effect, and Penn became a leader in the social activities at Dublin.

Some time after his arrival in Ireland, a mutiny broke out among the troops at Carrickfergus, and Penn rendered such valuable assistance in its suppression, that the Duke recommended the young cavalier for the position of Captain of the company of soldiers quartered on the elder Penn's estate at Kinsale. But the Admiral feared that such an appointment would excite the vanity of his son, and refused to adopt the suggestion. Inasmuch as the captaincy seems to have been eagerly sought after by the future proprietor, there is little doubt that had the appointment been made, the course of our colonial history would have been considerably altered.

But Penn's career appears to have been written in the resolves of destiny. One day, while in Cork on business, he heard that his old friend Thomas Loe was to

preach, and feeling a revival of his former interest in the Quaker teachings, he decided to attend the meeting. The text was: "There is a Faith which Overcometh the World, and there is a Faith which is Overcometh by the World," and from that moment Penn was a professed Quaker. In 1668 he publicly announced his conversion to the Quaker faith, and during the next ten years was repeatedly fined and imprisoned for the active support he gave to the followers of Fox. But better times were at hand. As Charles II was approaching the end of his reign, the influence of his brother, James, Duke of York, was daily growing stronger.

James, an avowed Catholic, wished toleration for his co-religionists, and even before the death of Charles II, the statutes against non-conformists were held in abeyance. In 1687, when James had reigned for nearly two years, the Declaration of Indulgence was promulgated. This removed the restrictions against all dissenters, thus placing the different branches of the Christian religion upon an equal footing.

These events and the subsequent revolution of 1688, do not concern us here. Penn's relations with America antedate the fall of James II by many years, and began about the year 1676, when he became interested in the Jerseys. The grant of 1681, and the difficulties attendant upon the boundary settlement are reserved for treatment in the succeeding chapters. The foregoing has simply been by way of introduction, and merely the barest outlines of the lives of the respective proprietors have been attempted.

CHAPTER II

"HACTENUS INCULTA"

The preamble to the Maryland charter reads as follows: "Whereas our well beloved and right trusty Subject Caecilius Calvert, Baron of Baltimore, in our Kingdom of Ireland, son and Heir of George Calvert, Knight, late Baron of Baltimore, in our said Kingdom of Ireland, treading in the Steps of his Father, being animated with a laudable, and pious Zeal for extending the Christian Religion, and also the Territories of our Empire, hath humbly besought Leave of Us, that he may transport, by his own Industry and Expense, a numerous Colony of the English Nation, to a certain Region, herein after described, in a Country *hitherto uncultivated,* in the Parts of America, and partly occupied by Savages, having no Knowledge of the Divine Being, and all that Region, with certain Privileges, and Jurisdictions, appertaining unto the wholesome Government, and State of his Colony and Region aforesaid, may by our Royal Highness be given, granted, and confirmed unto him and his Heirs."[12] Strange to say, on the interpretation of the phrase *hactenus inculta, hitherto uncultivated,* contained in the foregoing preamble, depended in a great measure the future development of Maryland. If the words were to be strictly construed, the settlements made under the authority of any Christian prince on territory even included within the boundaries expressed in the King's charters, were to be held inviolate and those in possession to continue undisturbed.

The Maryland patentees held the phrase to be merely descriptive, and this appears to be the only tenable view. That Charles I, claiming sovereignty under the discoveries of the Cabots, would have respected the Dutch claims to lands along the Delaware, is most improbable.

[12] Macdonald, *Select Charters,* p. 54.

Indeed, a little investigation into the actions of the English government from 1616 onward, unmistakably points to the view that the Dutch settlers on both the Hudson and the Delaware were regarded as "interlopers."

The colonial charters, as a rule, consisted of the premises, the movent clause, the habendum and tenendum clauses, the warranty clause, the penal clause, and the datal clause. The premises merely stated the name and the title of the grantee; a description of the thing granted, and the reason for its bestowal. The movent clause expressed the reasons for the grant, and often was incorporated in the premises. The habendum and tenendum clauses defined the estate granted and the tenure by which it was held.

The other clauses do not require our attention at this time. The first three, however, are very closely related, and often are merged one into the other. The premises naturally contain words of a general descriptive character, and are developed and determined by the two succeeding and specific clauses. In the Maryland charter, the words *hactenus inculta* appear only in the premises, and their absence from the other clauses of the instrument seems to prove the contention that they were simply words of qualification and not limitation. Yet it was exactly this phrase that afforded a loop-hole of escape for the Dutch commissioners who were sent to protest against Baltimore's title to Delaware.

After the Dutch conquest of New Sweden, in 1655, that territory was divided into two provinces, Altona and New Amstel. Inasmuch as Delaware lay within the boundaries granted in the Maryland charter, the governor of Maryland in 1659 sent Col. Nathaniel Utie to protest against the Dutch occupation. Stuyvesant, hearing of Utie's mission, sent two commissioners, Augustine Herman and Resolved Waldron, to present the Dutch claims of prior exploration and settlement. After examining the Maryland charter, the Dutch envoys seized upon the

phrase *hactenus inculta,* and strenuously maintained that it was intended as a limitation upon the territory granted to Calvert. Of course, such a latitude of view in regard to the interpretation of the famous phrase was warmly contested by the Maryland authorities, but the Dutch commissioners were not to be outdone, for "with exemplary gravity" they proceeded to trace the Dutch title back to Columbus, and as the rightful heirs of Spain, immediately claimed the whole coast.

This was merely the first occasion that the phrase "hitherto uncultivated" was employed against the validity of Lord Baltimore's title to Delaware. Even up to the present time the argument has constantly appeared in the writings of Pennsylvania historians, and in an article in the Pennsylvania Magazine of History, Mr. Scaife makes the following statement. "The Delaware Bay region was," he observes, "then (June 20, 1632) in the actual possession of the Dutch, and it is not to be supposed for a minute that, had Baltimore claimed the territory at once, and the Dutch had resisted, Charles I would have risked a war with the Netherlands to put Baltimore into possession. On the whole, then, the natural conclusion seems to be that *hactenus inculta* were words not of description merely, but in fact, of condition and limitation."[13]

In the first place, by June of 1632, Swaanendael, the only Dutch settlement west of the Delaware, which had been planted in April, 1631, had been destroyed, and the news of this event reached England in May, 1632. It is incorrect, therefore, to urge previous Dutch occupation at the date of the issuance of the charter to Cecilius Calvert in June, 1632.

The Dutch claim to a legal title for the territory lying between the thirty-eighth and forty-first degrees of north latitude, was from the very first bitterly opposed by the English, and even if the settlement at Swaanendael

[13] *Penna. Mag. of Hist.*, pp. 241 *et seq.*

had not been destroyed by the Indians, it is not likely that Charles I would have allowed that occupation by the Dutch to influence the language of a charter. As early as 1620, the "Plymouth Company resolved to lose no time in vindicating their claim of English title against the Hollanders, who as they alleged, as interlopers fell into the middle between Virginia and New England."[14]

At the instance of James I, the lords of his council sent a despatch (December 15, 1621) to Sir Dudley Carlton, the English ambassador, instructing him to protest against the unlawful occupation of New Netherland by the Dutch. The States General immediately adopted an evasive policy. Simulating complete ignorance of the affairs of New Netherland, which had been placed under the jurisdiction of the West India Company, they next essayed a system of dilatory tactics that consumed many months. First, they pleaded for time to investigate the charges presented by Carlton, and subsequently, according to a statement by Capt. John Mason, they declared that if any such settlement had been made in New Netherland, it was planted without their authority.

In discussing the English title to New Netherland, Dr. Brodhead allows his obvious sympathy for everything Dutch to cloud his judgment. He maintains that "mere occupancy confers a good title by law of nations and nature," and that "upon this principle the right of Spain, under the gift of Pope Alexander VI, was again denied." Subsequently he admits that the English title to Maine and Virginia was valid by right of exploration and discovery, but denies that such validity of title extended to territory between the thirty-eighth and the forty-first degrees of latitude.

The right by "actual possession" was an excellent theory to employ against the English, but, strange to say, it appears to have lost weight entirely when applied to the Swedish settlements on the Delaware. Again, it

[14] Brodhead, *History of New York*, p. 140.

might be urged that the "presently existing" doctrine of "effectual occupation" was not formulated until the conference at Berlin in 1884, "when Germany waked up to the fact that the world had been almost wholly occupied while she had been busy in consolidating her national unity."[14a]

As to Dr. Brodhead's allusion to the denial by England of the validity of "Pope Alexander's gift," a passing observation will suffice. In the writings of a multitude of American historians, this "gift" of Pope Alexander is the object of not a little caustic comment. The injustice and absurdity of such views may be clearly seen when one realizes that the Papal Bull (May 4, 1493) fixing the line at 100 leagues west of the Azores, was entirely superseded by the Treaty of Tordesillas, June 7, 1494.

This treaty, concluded between Spain and Portugal, was purely a lay arrangement, and changed not only the measurement suggested in the Papal Bull, but also the point from which that measurement was to be reckoned. To say that European nations subsequently disregarded the partition line of Pope Alexander, is meaningless. The delimitation of the spheres of influence, as fixed by the Papal Bull, merely obtained for one year, and that partition line was not even indicated on contemporary charts. It was the line of 370 leagues west of the Cape Verde Islands (the line provided for by the aforementioned treaty of Tordesillas) that was formally drawn on the maps of that time, but nevertheless the mythical line of Pope Alexander VI has not ceased to furnish Protestant historians an excellent opportunity for fulmination.

But to resume the narrative of the English claim to New Netherland, the next event of importance is the arrest of the Dutch ship *Orange Tree* at Plymouth in 1625. This action was brought about by the council for New England, who protested that the Dutch vessel was *en*

[14a] S. E. Dawson, *Lines of Demarcation*, p. 478.

route to engage in unlawful trading in "certain parts of the New World comprehended in the charter of 1620." The *Orange Tree* appears to have been detained for a short period and then released.

In 1627, Isaac de Rasieres, by order of Governor Minuit, despatched a letter of friendship to Governor Bradford of the Plymouth plantation. In his answer, Bradford expressed a desire to continue "good neighborhood and correspondence" with the Dutch, but questioned their title to the soil of New Netherland. This letter of Bradford caused some apprehension in New Amsterdam, and a spirited answer was immediately returned by Minuit. After waiting three months, Minuit sent a special messenger to Bradford with the suggestion that friendly commercial relations might redound to the benefit of both parties.[15]

Bradford's reply, after the usual salutations, still insisted on the priority of English title to the territory of New Netherland, and warned Minuit concerning probable raids from Virginia traders. Nor was this the last time that Bradford questioned the Dutch title. On the return of Rasieres in October, 1627, Bradford entrusted to him another letter of the same tenor. Indeed, so strongly and tenaciously had Bradford pressed the exclusive English title, that in November, 1627, tidings were brought before the States General that "our settlers there [New Netherland] were menaced by the English at New Plymouth, who now wish to hunt them out, or disturb them in their quiet possession and infant colony. They, therefore, ask the assistance of forty soldiers for their defense."[16] Thus it is seen that the Dutch were far from being peacefully planted in the valley of the Hudson. From the very first the English title had been stoutly maintained, and the Dutch occupation resented.

[15] Brodhead, *History of New York*, p. 181.
[16] Brodhead, *History of New York*, p. 181.

The next act of the English government shows still more clearly its view of the validity of the Dutch title. Besides, it is especially important because it occurred just previous to the granting of the charter to Cecilius Calvert, and shows that Charles I, even in the event of the continued existence of the colony at Swaaendael, would still have regarded Delaware as "plantable English territory."

In 1632, Director Minuit was recalled by the West India Company. Leaving New Netherland in March of that year, he was compelled by stress of weather to seek refuge in Plymouth harbor. At the instance of Capt. John Mason, the Dutch ship, the *Eendragt,* was attached on a charge of "illegally trading within the king's dominions." When the news of this detention reached the Dutch ambassadors, they immediately hastened to Newmarket to file their protest, and to demand the release of the attached vessel. The reply of Charles I is significant. He was informed as to the detention of the *Eendragt,* but inasmuch as the States General "had interdicted their subjects from trading in those stations," he refused to grant even a provisional release.[17]

A lengthy and complicated wrangle then ensued, and the Dutch ambassadors in England requested the States General to furnish proof of their priority of title. This their home government attempted to do, emphasizing the discovery of the North River in 1609; the neglect of the English to occupy the territory between the thirty-eighth and forty-first parallels; and the charter of James I (1606) which "left this region open to the Dutch."

It is not necessary to examine in detail this flimsy defense. Hudson was by no means the discoverer of the North River, and it is childish to suppose that the patent of 1606 left the territory from the Delaware and the Hudson "open to the Dutch."

[17] Brodhead, *History of New York,* p. 216.

The note presenting the claims of the States General was delivered by the Dutch ambassadors on May 5, and on May 22, the reply of Charles I was received. A careful perusal of the contents of this able paper should set at rest for all time the arguments based upon the phrase *hactenus inculta.*

It plainly shows how Charles regarded the Dutch claims, and is undoubted proof that he intended this much-mooted phrase merely to be a qualification. In the first place, the answer of May 22 strongly asserts "prior discovery, occupation and possession," and in conclusion pithily observes that "permission" would be extended to Dutch settlers if they would "submit themselves as subjects to his Majesty's government."[18] Indeed, so important is this communication stating the territorial rights of England, that I shall take the liberty of quoting it in full.

"The Dutch demand restitution of a certain ship, seized at Plymouth, on her return from a certain plantation by them usurped, north of Virginia, which, they allege, they acquired from the natives of those countries. It is denied, first, that the savages were possessors bonae fidei, of those countries, so as to be able to dispose thereof either by sale or gift, their habitations being changeable, (mouvantes), uncertain, and only in common. Secondly, it cannot be proved, de facto, that all the natives of said countries were parties to the said pretended sale. And as regards the allegation that the said natives have their abode around about them, the truth is, the English surround them on all sides, as they have already well discovered when they prosecuted the maintenance of their rights against them. But more than this: the rights belonging to his Majesty's subjects in that country are justified by first discovery, occupation, and possession which they have taken thereof, and by charters and letters patent obtained form our sovereigns, who, for these purposes,

[18] Brodhead, *History of New York*, p. 216.

were the true and legitimate proprietors there where the lords the states have not assumed to themselves such pretentions, and have not granted any charter to their subjects conveying in itself any title or power to them. Which was proved in the year 1621, when the late king, of happy memory, on the complaint and remonstrance of the Earl of Arundel, of the knights Fer. Georges (Gorges), and Samuel Argall, and of Captain Mason, directed his ambassador to urge on their lordships, the States General, to prevent the departure of certain vessels which were preparing to proceed to the aforesaid country, and to forbid their subjects to settle in that plantation; for their answer was, that they knew nothing of said enterprise, which, indeed, appeared very probable because the said ambassador, after having informed himself more particularly of the matter, assured his Majesty, in those letters, that it was only two companies of Amsterdam, who, without the knowledge or advice of the said lords, the State General, had commenced a traffic between 40° and 50°, in the limits of his Majesty's plantation, to the said countries of Virginia, and had given to those places there the names of New Netherland, Texel, Vlieland, etc., and sent ships of thirty and forty lasts to these regions in search of peltries; but that they had not learned that they had yet commenced, or meditated to establish a plantation there; and, moreover, that a goodly number of families, inhabitants of the said United Provinces, had then been soliciting him to procure for them a spot in the said country where they could dwell among his Majesty's subjects. That now if those who are returned from there, and the others who have remained behind, wish to make a similar petition, and to submit themselves to his Majesty's government, as his Majesty's subjects, they may know if it shall please him to admit them in that quality, and thus permit them to proceed thither with their ships and merchandise, or to sell them here at the highest price; provided that their lordships the States

shall prevent them from proceeding thither any more, of frequenting in any manner those regions. To which, if they do not consent, his Majesty's interest will not permit him to allow them thus to usurp and encroach on one of his colonies of such importance, which he has great cause to cherish and maintain in its integrity.

By these replies to the aforesaid complaints, their lordships the States General will understand how little ground they have to enter on their neighbor's territory, in defiance of any alienation thereof by his Majesty.''[19]

[19] O'Callaghan, *History of New Netherland*, pp. 135–136; also *Cal. of State Papers*, America and West Indies, 1575–1660, p. 27.

CHAPTER III

PENNSYLVANIA

In 1676, William Penn was appointed one of the trustees for the bankrupt Quaker, Edward Byllinge, and in the course of the next few years so improved his position that he became one of the proprietors of West Jersey. In 1682 the trustees for the Carteret estate sold East Jersey to twelve Quakers, and once more we find mention of William Penn.

But the Jerseys, it seems, did not appeal to Penn as territory in which Quaker ideals and theories might bear proper fruition. There were too many warring elements, and so that young cavalier-Quaker looked with longing eyes on the fair lands to the west of the Delaware. As sole proprietor of a province, Penn wished, untrammeled, to work out his theory of an ideal government; a government to be based largely upon the theories of Locke, of Harrington, and of Algernon Sydney.

It was to be a "holy experiment, and profit was a secondary consideration." Penn, however, was not the only proprietor to possess lofty ideals, though Professor Andrews in his valuable work, *Colonial Self-Government,* makes the following statement. In speaking of Penn, he observes that "he wished to found a colony for his fellow Quakers, to try a new and holy experiment in government, and in person to build up the new settlement. Since the days of the Massachusetts Bay Colony there had been among the various proprietors and patentees no example of motives such as these."[20] One is puzzled to know whether the prejudice of this distinguished scholar prevented a due acknowledgment of the splendid services of the Calverts, or whether the facts concerning an experiment not less "holy" were deemed unworthy of mention.

[20] *Colonial Self-Government,* p.168.

In June, 1680, Penn presented a petition to Charles II for "a tract of land in America lying north of Maryland; on the east bounded by the Delaware River; on the west limited as is Maryland, and northward to extend as far as plantable."[21] This grant was not prayed for as a settlement of royal indebtedness to Penn's father. That obligation had been removed from the shoulders of Charles II by the "Stop" of the Exchequer in 1672, and the province of Pennsylvania was bestowed merely as a means of extricating Penn from his financial difficulties. As late as 1698, in writing to a friend, he observed: "Had I pressed my own debts with King James, that his brother owed me, there had been sixteen thousand pounds."[22] Therefore, though Penn had received a province imperial in extent, he still considered the debt unpaid.

Penn's petition was referred to the Lords of Trade and Plantations, and was entered on their Journal, June 14, 1680. The minutes of their deliberations show that the chief difficulties in the way of the grant solicited, were the holdings of the proprietors, Charles Calvert, and James, Duke of York. Copies of this petition were ordered "to be sent to Sir John Werden, on behalf of the Duke of York, and to the agents of Lord Baltimore, to ascertain how far Mr. Penn's pretensions may consist with the boundaries of Maryland and New York."[23]

On June 23, 1680, answers were received from the agents of both the Duke of York and Lord Baltimore. On behalf of the former, Sir John Werden maintained the priority of the title of the Duke, and protested against the inclusion of Newcastle and the Lower Counties in any patent to be granted to Penn.

In the interest of Lord Baltimore, Barnaby Dunch and Richard Burke, request that "if the grant of land to Mr. Penn be passed, it may be expressed to be of land

[21] *Cal. of State Papers.* Col. 1677–1680. 1390.
[22] Andrews, *Colonial Self-Government,* p. 169.
[23] *Cal. of State Papers.* Col. 1677–1680. 1390.

that shall lie north of the Susquehannah Fort and north of all lands in a direct line between the said fort and Delaware River, and also north of all lands upon a direct line westward of the said fort; for that fort is the boundary of Maryland northward.'"[24] On June 25, 1680, Penn's petition was again considered by the Lords of Trade and Plantations, and being summoned, Penn agreed "that the Susquehannah Fort shall be the bounds of Lord Baltimore's province."[25]

It is evident that much depended on the location of the said Susquehannah Fort. In 1661, a solemn treaty was concluded between the Susquehannah Indians and Governor Philip Calvert. The stipulations provided for mutual assistance in time of war, and Governor Calvert agreed to despatch fifty men to build a block-house for the protection of the tribe. This provision was faithfully executed, and the fort was erected close to the fortieth parallel.

In 1670, Augustine Herman completed a map which, during several years, he had been making for Lord Baltimore, and in 1673 it was engraved in London by W. Faithorne. As shown by this survey, the Susquehannah Fort is located exactly on the fortieth parallel. Now, when Penn agreed to have a line north of the Susquehannah Fort as his southern boundary, it is rather certain that he took the precaution to ascertain the exact location of that important block-house. If he did not, then he was liable for his own negligence for undoubtedly the agents of Calvert had a copy of this map when they answered the summons of the Lords of Trade and Plantations in regard to the boundaries of Maryland.[26]

But, strange to say, the existence of a chart so accurate appears to have been generally unknown, for in November, 1680, Sir John Werden, secretary to the Duke

[24] *Cal. of State Papers.* Col. 1677–1680. 1404.
[25] *Cal. of State Papers.* Col. 1677–1680. 1409.
[26] A copy of this map may be seen on page 134, Maryland Fund Publications, 30–34.

of York, addressed a very significant letter to William Blathwayt, secretary to the Lords of Trade and Plantations. It discussed the proposed grant to Penn, and as to the uncertainty relative to the fortieth degree says: "I believe descriptions of lines of longitude and latitude are very uncertain, as also under what meridian the head of Delaware River lies, which I believe has never been surveyed by any careful artist. The Duke's intention is that Mr. Penn's grant be bounded on the east side by the Delaware *River,* and that his south limit be *twenty* or *thirty* miles beyond Newcastle, *which extent northward of Newcastle we guess may reach as far as the beginning of the fortieth degree of latitude.* If, therefore, Mr. Penn's patent be so worded as to leave Newcastle and twenty or thirty miles beyond it free with the Delaware River for the eastern boundary, I think this is all the caution necessary, for the Duke does not concern himself how far north or west Mr. Penn's patent extends."[27]

But Penn feared that twenty or thirty miles above Newcastle would not afford him adequate shipping facilities on the Delaware, therefore he promptly informed Sir John Werden that he thought the fortieth parallel would cross about *twelve* miles to the north of that town. The substance of this interesting conversation between Sir John and Penn is contained in the following letter from the former to William Blathwayt. "Mr. Penn having fallen into discourse with me of his concerns in America since I wrote to you on Saturday, I have told him the substance of what I wrote, and he seems to fear that if his south limits be strictly set as twenty or thirty miles north from Newcastle town, he shall have so little of the river left as very much to prevent the hopes he hath of improving the rest within his patent; but on the other side he is willing that twelve English miles north of Newcastle be his boundary, and believes that distance will fall under the beginning of the fortieth degree of latitude.

[27] *Cal. of State Papers.* Col. 1677–1680. 1599. Italics are mine.

I have already signified to you all that I know of the Duke's mind herein, which is in general to keep some convenient distance from Newcastle northward for a boundary to the Colony; but I confess I do not understand why 'tis precisely necessary to insist on just such a number of miles more or less in a country of which we know so little, and when all the benefits are intended to the patentee that others enjoy, so as I submit this point to their Lordship's consideration, and do not think it material to add more at present.''[28] The genesis of the twelve-mile circle around Newcastle is thus explained, and the Duke of York appeared content that the northern boundary of his Delaware colony should be so determined.

The proposed charter was now submitted to Lord North, Chief Justice of the Court of King's Bench. That noble jurist, thereupon, ignoring the agreement relative to the Susquehannah Fort "because the notice sent was merely formal," drew the patent to suit himself.

It is somewhat puzzling that Lord North in drawing the Pennsylvania charter in accordance with Penn's wishes as to the twelve-mile circle about Newcastle, should have pointedly disregarded the agreement concerning the Susquehannah Fort merely because the notice sent Baltimore's agents was only "formal." If North believed that the fortieth parallel would actually run twelve miles to the north of Newcastle, why was there any need of disregarding the agreement? It seems probable that Penn had seen the map of Augustine Herman, and perceiving that the fortieth parallel was some twenty-five miles above Newcastle, instructed North "to ignore" an agreement which was supposed to have been made in all good faith.

In this place it may be advisable to examine an argument that Penn subsequently advanced against Baltimore's title to the territory about Newcastle. This was the claim that inasmuch as Baltimore's charter merely

[28] *Cal. of State Papers.* Col. 1677–1680. 1603.

provided for lands *lying under the fortieth degree of north latitude,* it was the intention of Charles I to grant to George Calvert only the territory included within one degree of latitude. That is to say, Penn asserted that the clause in the Maryland charter fixing Baltimore's northern boundary as the land which "lyeth under the fortieth degree of North latitude" expressly excluded all the territory within the fortieth degree itself. This claim, advanced only after the struggle over the boundaries had grown bitter, requires but a brief discussion. First, when Penn was summoned to appear before the Lords of Trade and Plantations in answer to his petition for lands in North America, he was informed by the Committee that Calvert's charter provided for two degrees of latitude. Then he was asked whether he would not be satisfied with the gift of three degrees of latitude, whereupon the future proprietor stated that he was content to submit "the how and what to the Board."[29] Now the King's letter of August 19, 1682, explicitly recommends that Lord Baltimore shall "set down his northern boundary with Penn by an admeasurement of the two degrees contained in his patent." This royal communication was written at the suggestion of Penn, and shows that before his first visit to Pennsylvania, the celebrated Quaker leader considered Baltimore's patent to include at least two degrees of latitude.

Moreover, the language of the Maryland charter proves that two or more degrees of latitude were provided for. After declaring that Baltimore's boundary line is to extend northward to that part of Delaware Bay which "lyeth under the fortieth degree of north latitude," the charter describes the northern boundary as extending westward "in a Right Line by the degree aforesaid unto the true meridian of the first fountain of the River of Pattowmack." Hence, it is clear that Calvert's territory was meant to include the entire fortieth degree, for

[29] *Cal. of State Papers.* Col. 1681–1685. 1179.

the end of the thirty-ninth parallel does not touch the "first fountain" at all, but crosses the Potomac about half-way between its mouth and its source. It is apparent that Penn's contention as to his right to the whole of the fortieth degree was not considered until after the discovery of the exact location of the fortieth parallel. It was a claim that discredited his own statements, and his eagerness to present arguments so questionable can hardly be edifying to the admirers of the first proprietor of Pennsylvania.

Soon after Penn's charter had passed the seals, his cousin, William Markham, was sent to the province as deputy governor. He arrived in Delaware in July, 1681, and some time in August, visited Baltimore at St. Mary's. Here he was taken dangerously ill, and remained under Lord Baltimore's care until the following September. Upon his departure, he promised to meet Lord Baltimore in October to settle the question of boundary lines. At the appointed time Markham was seized with a second attack of illness, and wrote to Baltimore that it would be impossible to fix the respective boundaries until the next spring.

Meanwhile, on September 16, 1681, Penn had written a letter to six prominent citizens of Baltimore and Cecil Counties, cautioning them against paying any further quit-rents to Lord Baltimore. He assured them that their holdings lay within his grant, and that they would find "his" government "easy, free, and just." Hearing of this artful letter, Baltimore redoubled his efforts to catch Markham, and after an exciting chase of over a year, finally, on September 24, 1682, overtook him at Upland (Chester).

Now it happened that upon Markham's departure for Pennsylvania, he was entrusted with two letters; one an unctuous missive from Penn to Baltimore, the other, a letter from the King ordering a speedy adjustment of the boundaries. In conclusion, the royal mandate ordered

Lord Baltimore to appoint "with all convenient speed some person or persons to meet the agents of William Penn to define the boundaries of Maryland and Pennsylvania, according to our letters Patent."[30]

In contravention of the express command of his Majesty's letter, Markham had sought to postpone the meeting as long as possible. In a letter dated March 11, 1682, Lord Baltimore complains to William Blathwayt of the delay in the settlement of the boundaries, and gives the probable reason for Markham's studied procrastination. "I am privately assured," he says, "that a friend sent over by Penn has privately taken observations at the head of the bay, and now gives out that, if William Penn be mistaken in the assurances given him by masters of ships, that the line would fall very low in Maryland, he must then be compelled to purchase a port of Baltimore, or their ships must enter and clear in Maryland."[31]

The language of his Majesty's letter of April 2, 1681, is also worthy of notice. Lord Baltimore shall appoint "with all convenient speed, some person or persons to meet the agents of William Penn to define the boundaries of Maryland and Pennsylvania according to our Letters Patent." As the "letters patent" expressly state that Lord Baltimore's northern boundary is the fortieth degree, this letter of his Majesty virtually confirms the Charter of 1632.

At the first meeting between Lord Baltimore and William Markham, Penn's agent showed no haste concerning the boundary adjustment. He claimed that the glasses of his sextant had been lost, and it was only with a great deal of difficulty that an observation could be taken, and that, with a borrowed instrument. It was clearly demonstrated that Upland is about twelve miles

[30] *Cal. of State Papers.* Col. 1681–1685. 62.
[31] *Cal. of State Papers.* Col. 1681–1685. 437.

south of the fortieth parallel, and Markham was so dismayed by this discovery that he refused to assist in any further observations.

But before passing on to a consideration of the fruitless negotiations between Penn and Baltimore, I shall give a short account of the manner in which Penn acquired the Lower Counties. On March 12, 1664, Charles II, by letters patent under the great seal, granted to his brother James, Duke of York, "all that part of the Maine land of New England extending from the St. Croix River westward to Pemaquid and the Kennebec, and northward to the River of Canada, together with Long Island and the lands from the West Side of the Connecticut (River) to the *East* Side of Delaware Bay."[32]

A glance at the terms of this conveyance, reveals the fact that the Dutch colony of New Netherland was included within the limits fixed by this instrument. The English government had always disputed the Dutch title to the land between the thirty-eighth and forty-first parallels, and the grant to the Duke of York was merely for territory that, from the date of James' patent of 1606, had been claimed by England.

During March, 1664, the Duke of York appointed Col. Richard Nicolls as Deputy Governor of his lands in New England, and commissioned Sir Robert Carr, Col. George Cartwright, and Samuel Maverick to assist him in the reduction of New Netherland. In order to insure the conquest of the Dutch possessions, the Duke provided three war vessels, a hired transport, a few hundred soldiers, and the sum of £4,000.

Stuyvesant, the colonial Dutch governor, had received ample warning of the impending attack, and the burghers of New Amsterdam, assisted by the negroes of the West India Company, were compelled to erect fortifications. New Amsterdam was, however, really indefensible, and from the outset the inhabitants realized the fact. Shortly

[32] Macdonald, *Select Charters*, p. 127.

after the arrival of Nicolls in New England, John Winthrop sent a letter to Stuyvesant setting forth the terms that would be granted to the inhabitants if they would submit to British authority.

Upon receipt of this conciliatory message, Stuyvesant flew into a great rage, tore the letter into bits, and swore that he "had much rather be carried out dead than surrender." But he was not supported by the burghers, and on September 5, was seized and forcibly restrained from firing on the English vessels lying off Manhattan Island. On September 8, 1664, New Amsterdam was surrendered, and the territory passed into the possession of the Duke of York.

Although the Duke's patent specifically limited his territory to land "east of Delaware Bay," nevertheless Sir Robert Carr was sent to reduce the Dutch and Swedish settlements situated on the *west* side of the Delaware. It appears that the seizure of the Delaware province was in the mind of the Duke even before the expedition left England, for Sir Robert Carr was instructed to inform Lord Baltimore and his agents that "their pretended rights being a doubtful case, possession would be kept until his Majesty is informed and otherwise satisfied."[33] On the 10th of October, Newcastle was stormed, and the Duke of York assumed control of the Lower Counties as an appendix to New York.

It is evident that the Duke of York possessed no legal title to Delaware, and his attorney admitted that the title of his noble client was not conveyed in his charter, but merely rested "on the King's acquiescence."[34] Even as late as 1677 the validity of the Duke's title was questioned. In a letter of that year, Sir John Werden, secretary to the Duke of York, makes the following significant observation: "If he [Andros, Governor of New York] come for England next autumn, will see what can be

[33] Brodhead, *History of New York*, p. 744.
[34] Shepherd, *Proprietary Government in Pennsylvania*, p. 119.

further done; would be glad it [Delaware] were confirmed in the Duke's possession by a better title."[35]

The question of title to Delaware was destined to be further confused by its grant to William Penn. On August 24, 1682, this Proprietor obtained from the Duke of York, deeds of enfeoffment for the country around Newcastle and the three Lower Counties. The Duke's title being admittedly defective, be obtained from his royal brother an express grant of the territory in question, and immediately transferred the instrument to Penn as security until there could be effected a further confirmation of the deeds of enfeoffment. Some time after this grant of March 22, 1683, the Duke of York executed a release, and applied to his brother for a more ample grant. This second application was defeated by a counter petition from the agents of Lord Baltimore, and even though the decision of the Lords of Trade and Plantations confirmed the Duke in his possession of the Lower Counties, the second instrument never passed the seals. The first patent, therefore, was still valid, and Penn held the Delaware country under the grant of March 22, 1683.

Of course, the equity of the whole transaction is open to question. In the first place, Penn petitioned for, and gladly received lands to which the Duke of York had no legal title. Secondly, when Penn was asked concerning the illegal transfer of the Lower Counties, he adopted an evasive and disingenuous policy, and through his unceasing activity, and the constant use of the Duke of York's name in all the hearings, strongly influenced, in 1685, the decision of the Committee of Council.

In this transfer of the duke to Penn, there is also involved an interesting legal question. Did the Duke's conveyance carry with it the rights of government which Penn immediately assumed? From the time of Edward I, "the right to institute government was, according to English law, a prerogative right inherent in the crown

[35] *Cal. of State Papers.* Col. 1677–1680.

which could only be conveyed to others than the King by his express grant and patent."[36] In the Jerseys the same question had arisen in connection with the rights of the grantees, Carteret and Berkeley, and, as in the Jerseys, the transaction between the Duke of York and William Penn was purely personal. "In such a transaction a prerogative right could scarcely be conveyed."[37] Therefore, it is clear that Penn's assumption of governmental powers in the Lower Counties was without legal warrant.

In the latter part of October, 1682, Penn appeared at Newcastle, and demanded possession of the colony. This was immediately granted, and the presentation of a porringer of water from the Delaware, then a piece of turf and a broken branch, fulfilled the ancient fuedal custom of delivery of seisin. On the 2d of November, Penn wrote from Newcastle asking Lord Baltimore to appoint a place for a conference. Accordingly, on the 13th of December, the proprietors met at the house of one Col. Thomas Tailler, in Anne Arundel County. After an exchange of formalties, Penn presented to Baltimore a new letter from his Majesty, Charles II. This was dated August 19, 1682, and "recommends that Lord Baltimore take Watkins Point as his southern boundary, and as soon as possible set down his northern boundary with Penn by an admeasurement of the two degrees granted in his patent, sixty miles to a degree, from the southern boundary as already settled."[38] It is evident that this was very different from his Majesty's letter of April 2, 1681, and clearly shows the adroit management of Penn.

After a careful perusal of this second letter, Baltimore refused to abide by its directions. The King, he stated, had been "misinformed," and in proof of his contention he read the terms of the Maryland charter. In that instrument there was no mention of an "admeasurement"

[36] Tanner, *Province of New Jersey*, p. 125.
[37] Tanner, *Province of New Jersey*, p. 125.
[38] *Cal. of State Papers.* Col. 1681–1685. 659.

of degrees, and Baltimore declined to allow the King's letter to take precedence over the royal charter. That he was justified in this stand, is, of course, self-evident, for Penn himself admitted that probably he would have adopted a similar course.

Perceiving that the King's letter was displeasing to Baltimore, Penn agreed to waive the royal mandate if Baltimore would accept certain proposals. The first of these was a request to ascertain, by a measurement taken from some well known point, the boundaries, existing between the two provinces. The Capes, Penn observed, had long been reckoned to lie about 37° 5′, and he suggested an admeasurement from them. From this suggestion Baltimore dissented, saying that inasmuch as his northern boundary was fixed at the fortieth degree, there was no better way of ascertaining it than by the employment of a sextant. But Penn was firm in his resolve to have the measurement begin at some familiar point, and he asked Baltimore to take Watkins Point as his southern boundary, and measure northwards two and one-half degrees. This suggestion clearly sprang from Penn's ignorance of the exact location of Watkins Point. He had long been convinced that Baltimore had encroached upon Virginia territory, and that Watkins Point was about 37° 30′ or even lower. As a matter of fact, Watkins Point lies close to the thirty-eighth parallel, and two and one-half degrees, at the old computation of sixty miles to each degree, would have placed the boundary line north of Philadelphia. Of such a result, Penn had no idea, and it is to be regretted that Baltimore did not accept this proposal.

There is another point to be noticed in this interview between Penn and Baltimore—Penn's exhibition of disingenuousness. Before leaving England, he had received from the Duke of York, the Newcastle colony and adjoining lands. To this tract the Duke had not the shadow of a legal title, and no one appreciated that fact better than

William Penn. He had been advised that his southern boundary was far too high to afford shipping facilities on the Delaware, so he determined to lay aside his scruples and at any cost to acquire possession of the Lower Counties.

Through his influence with the Duke of York, the transfer of the Newcastle colony was easily effected and upon his arrival, the famous Quaker at once assumed control of the government. He had, however, already assured Lord Baltimore that on no account would he be disturbed in his possession of the Delaware tract, and both Penn's breach of trust and his evasiveness are clearly shown in this conference of 1682. After the King's letter had been read, and while the question of the respective boundaries was being discussed, Baltimore asked Penn to explain his actions in regard to his occupation of the Lower Counties.

Baltimore: "May I ask, have you purchased the Duke of York's claims on the Delaware?"

Penn: "I have them, on conditions by his gift. But we wander from the point, namely, our boundary."

Baltimore: "I remember, Mr. Penn, that you once told me, in England, that you had refused all offers of the Duke of York's claims on the Delaware, *as you knew that in reality they were mine.* I hear that you have now taken them; may I ask upon what grounds?"

Penn: "Pray, Lord Baltimore, let us settle one thing at a time."[39]

Inasmuch as the whole province of Delaware falls below the fortieth parallel, it is difficult to see how it could be excepted from any discussion relative to boundary lines.

After three days of useless wrangling, the conference dissolved. Nothing had been accomplished, and a second meeting was arranged for the next spring. In the latter part of May, 1683, Lord Baltimore journeyed to Newcas-

[39] *Cal. of State Papers.* Col. 1681–1685. 849. The italics are mine.

tle, where the entire question as to proper boundaries was reviewed. Penn had now become thoroughly apprehensive as to the future development of his province, and he regarded the possession of a suitable harbor on the Delaware as vital. It is true that he had assumed control of the Newcastle colony and the territory as far as Cape Henlopen, but his title, derived from the deeds of enfeoffment from the Duke of York, was of very doubtful legality. Moreover, Lord Baltimore claimed the Lower Counties under the terms of his charter, and the question would have to be decided by the Committee of Lords of Trade and Plantations.

Again, the northern limit of the Delaware colony was set at twelve miles northward of Newcastle. It had been clearly demonstrated by observations taken with a sextant, that the fortieth parallel is some twenty miles to the north of Newcastle, and to the intervening territory (between twelve miles about Newcastle and the fortieth degree) Lord Baltimore had a strong title. An admission of his title to this intervening strip would sever Penn's province, thus making communication more difficult, and creating numerous other disadvantages.

Penn had reflected upon this problem for some time, and finally adopted an expedient that does credit to his ability to extricate himself from embarrassing situations. This was a request made to the Committee on Trade and Plantations, to reckon the degrees contained in Baltimore's patent at sixty miles to each degree. To appreciate the astuteness of this request, one must consider the geographical knowledge of that time. Throughout the early part of the seventeenth century, parallels of latitude were still thought to be sixty miles in width. Newton himself had been led astray by his erroneous calculation, and the apparent contradictions in many of his experiments caused the philosopher no end of bewilderment. Science, however, was making rapid strides, and before 1670, R. Norwood and W. Snell had made notable contri-

butions to astronomical science. Picard, the celebrated French astronomer, was another scientist who evinced interest in parallels of latitude, and to him belongs the credit of first calculating the true width of a degree of latitude. In 1672, Oldenburg read a paper before the Royal Astronomical Society, setting forth the results of Picard's observations, and it was then that Newton received a new inspiration and had his previous contradictions satisfactorily explained.

It is evident, therefore, that when the Pennsylvania charter was granted, in 1681, the true width of degrees of latitude was generally known. Scaife, in his article on the Pennsylvania-Maryland Boundary Dispute, asserts that it was not until 1682 that Newton received knowledge of the true width of a degree, and also that it was not until that year that the results of Picard's calculations were known to the Royal Astronomical Society. It is hardly necessary to say that these assertions are groundless, and are founded on an article contained in the ninth edition of the *Encyclopedia Britannica.*[40]

Undoubtedly Penn was aware of the progress that was being made in astronomical science, and the King's letter of August 19, 1682, drawn up at Penn's suggestion, is a very clear illustration of this knowledge. He hoped that by a strict admeasurement of the two degrees which he claimed were provided for in Baltimore's charter, he would gain ten miles in each degree, and in this way obviate the danger of a separation of his province.

At the second meeting between the proprietors, this question of a strict computation of degrees arose, and Penn, in a letter to the Lords of Trade and Plantations, broaches his scheme to gain twenty miles of territory at the expense of Lord Baltimore. He justifies himself by maintaining that inasmuch as degrees of latitude were supposed (at the time of the granting of the Maryland charter) to contain but sixty miles, therefore, Lord Balti-

[40] *Penna. Mag. of Hist.* Vol. 9, 267.

more should be satisfied with the older computation no matter how erroneous it might be. "Perceiving," says Penn, "that my pressing the King's letter was uneasy to him, and being resolved to dispose him *with all softness* to a friendly arrangement, I waived the two degrees and pressed the next part of the letter, only, *viz.*, the admeasurement; *for though it were two degrees and a half from Watkins Point to the fortieth parallel,* yet let it be measured at sixty miles to a degree, and I would begin at forty, fall as it might. My design, was that every degree being seventy miles, I should get all that was over sixty—the proportion intended for Lord Baltimore by his patent and the computation then assigned to a degree."[41]

It is apparent that in Penn's case the wish was father to the thought. He was extremely anxious to secure every advantage, and, as will be related, his New Jersey transactions had proved him a disingenuous and skillful pleader. For a second time he was engaged in a struggle, which, from a legal standpoint appeared hopeless, and for a second time he emerged victorious.

It was a very ingenious argument to maintain that, inasmuch as degrees of latitude were reckoned at sixty miles to each degree at the time of the granting of the Maryland charter, therefore, Baltimore should be held to the ancient computation. Penn, in his fight for a harbor on the Delaware, claimed that even though a strict computation of the terms of his charter would not allow him this privilege, yet it had been the "intention" of Charles II to convey adequate shipping facilities to him, and for that reason he should be given a harbor on the Delaware.

Scaife, who seems to hold a brief for Pennsylvania, also inclines to this theory as to the "intention" of the royal grantor. In support of his contention, the Pennsylvania historian quotes Vattel: "It is a general rule of interpretation of written documents that since the law-

[41] *Cal. of State Papers.* Col. 1681–1685. 1179. Italics are mine.

ful interpretation ought to tend only to the discovery of the thoughts of the author, as soon as we meet with any obscurity, we should seek for what was probably in the thoughts of those who drew it up, and to interpret it accordingly.''[42]

But this principle is double-edged. Undoubtedly it was the ''intention'' of Charles I to grant Calvert at least two degrees of latitude. There was no question as to the number of miles contained in the grant, and it is undeniable that, if shortly before the passage of the charter the proper width of a degree had been ascertained, Charles I would still have passed the charter as it stood. Clearly, Calvert was entitled to at least two degrees, and when science demonstrated that each degree is approximately seventy miles, it appears self-evident that this new admeasurement should inure to the benefit of the proprietors whose provinces bordered on lands which had not as yet been granted away by the King.

Of course, this would not be so if the strip of territory along the Atlantic Coast had been thickly settled. It would have been impossible to alter the boundary lines of a number of colonies. This would have created a highly disastrous border warfare, and the difficulties in making an equitable adjustment of the later boundary lines would have been insuperable. But in the case of Maryland, conditions were highly favorable for a satisfactory settlement, and it is certain that if the boundary lines had been drawn in accordance with the new computations, the territory of no other patentee would have been affected. The Pennsylvania charter was not granted until March 4, 1681, nine years after the results of Picard's calculations had been read before the Royal Astronomical Society. Penn had agreed to take the line running north of the Susquehannah Fort as his southern boundary, and by the map of Augustine Herman, this fort was shown to lie close to the fortieth degree. Furthermore, the observa-

[42] *Penna. Mag. of Hist.* Vol. IX, p. 265.

tions taken by Herman were made with a sextant, and this fact sets at rest all doubts relative to the exact location of the fortieth parallel.

Again, the King's letter of April 2, 1681, specifically states that the agents of Baltimore and Penn shall "meet with all convenient speed to define the boundaries of Maryland and Pennsylvania according to our letters patent." It is significant that there is no mention made in this letter of the fact that degrees of latitude were to be reckoned at sixty miles each, and the unmistakable implication is that Lord Baltimore is to enjoy the benefits of the exact computation of a degree. Indeed, to the student of this controversy, it is plain that in this matter Penn appears in the light of an opportunist, and only advances the argument of ancient computation in order that he might prevent a separation of his province. Doubtless, if a commodious harbor had been situated on the upper Delaware, this plea of Penn would never have been heard.

After the two conferences (December, 1682 and May, 1683) had proved fruitless, it was evident that the determination of the boundaries would have to be made by the Lords of Trade and Plantations, to whom were referred all questions relating to colonial administration. Therefore, it was before this committee that the hearings in the Penn-Baltimore case were held.

In May, 1683, the Lords of Trade and Plantations received the petition of Richard Burke (agent of Lord Baltimore) praying that "a grant which is passing to the Duke of York of the parts adjacent to Delaware Bay be delayed, till the King is satisfied as to the territory granted to Lord Baltimore."[43] It will be remembered that the Duke of York surrendered his patent of March 22, 1683, therefore, the "grant which is passing to the Duke of York," refers to a second and more beneficial one which, as a matter of fact, never passed the seals.

[43] *Cal. of State Papers.* Col. 1681–1685. 1088.

This petition found a ready response, for on the same day, May 31, 1683, the King issued an order in council restraining the execution of his second grant to the Duke of York until "the patents of Cecil Lord Baltimore be considered." On June 12, 1683, arguments by counsel for Penn and Baltimore were presented to the Lords of Trade and Plantations. The point in dispute was: "Did the Dutch possess the lands claimed by Mr. Penn in 1632, which Penn's agent undertakes to prove affirmatively?"[44] The question of prior Dutch occupation was all important, and it was on Penn's supposed proof of this fact that the committee based their decision of 1685.

The minutes of the proceedings of the Committee on Trade and Plantations show that the controversy dragged on for another year and a half before any decision was rendered. In the meantime Charles II had succumbed to a stroke of appoplexy, the Duke of York ascending the throne as James II. James had always been an intimate friend of William Penn, and at the latter's request the committee promptly pushed the boundary controversy between Penn and Baltimore to a settlement. On November 7, 1685, upon the recommendation of the committee, an order in council was issued. This stated that upon examination of the affairs in dispute between Penn and Baltimore, the committee had decided that "the land intended to be granted by the patent to Baltimore was only that which was uncultivated and inhabited by savages." It was held that the territory in dispute had been occupied and cultivated prior to 1632, and that the tract in question had always been regarded as a colony distinct from Maryland. Therefore, it was ordered that the territory bounded on the east by the ocean and the river and bay of Delaware, and on the west by Chesapeake Bay, should be divided into equal parts by a line drawn from the latitude of Cape Henlopen northward to the fortieth degree. "In view of the fact that James was personally interested

[44] *Cal. of State Papers.* Col. 1681–1685. 1120.

in the affair, it is not remarkable," says Shepherd, "that such a decision was rendered."[45]

The injustice of this decision is only too apparent. The absurdity of the argument based upon the descriptive phrase "hactenus inculta" has been treated in the preceding chapter, and the fact that Penn himself must have been aware of the destruction of Swaanendael, is simply another illustration of his eagerness to adopt questionable methods for self-aggrandizement.

But there is another point to be noticed, namely, the language of the decision of the Committee on Trade and Plantations. This expressly states that "for avoiding all future differences, the tract of land lying between the river and bay of Delaware and the Eastern sea, on the one side, and Chesapeake Bay on the other, be divided into two equal parts by a line drawn from the latitude of Cape Henlopen to the fortieth degree of northerly latitude,—the eastern half to belong to his Majesty and the other to remain to Lord Baltimore."[46]

The phrase "to the fortieth degree of northerly latitude," unmistakably shows that the committee held Baltimore's province to extend to the fortieth parallel, and inasmuch as that parallel had been recently fixed by observation taken with standard instruments, it seems as though Penn's plea to have the degrees computed at sixty miles each, was entirely disregarded. In fact, though the decision entailed the loss of the Lower Counties, it virtually confirmed Baltimore's position as to his northern boundary.

But Penn and his heirs never ceased their pretensions to the territory lying to the north and west of Newcastle, and in 1732, Charles, fifth Baron Baltimore, signed away all his rights to this disputed tract. The circumstances connected with this extraordinary donation will soon be related; for the present I shall consider the legal objec-

[45] *Proprietary Government in Penna.*, p. 135.
[46] *Maryland Fund Publications.* No. 30, p. 84.

tions which Penn urged against the validity of Baltimore's title to the Lower Counties.

One of the arguments that Penn adduced in contravention of Baltimore's title was that "it is a prerogative inherent in the crown to possess all lands taken by conquest." Delaware, he maintained, prior to the English conquest by Sir Robert Carr in 1664, was in the secure possession of the Dutch. This continued occupation rendered their title valid, and when the territory was conquered by the English, the province passed into possession of the Crown. Penn boldly asserts that this principle was according to *Jus Gentium,* and that any rights Baltimore may have had in the soil of Delaware, were completely extinguished in 1664 by the conquest of the Newcastle colony. The territory immediately reverted to the Crown, and could be parcelled out as the King saw fit.

As usual, Penn appears in the rôle of special pleader, and his argument is far from convincing. At that time the standard authority on questions of international law was Grotius, whose great work, "The Law of Peace and War," has served as a foundation for all subsequent treatises. In his exposition of the rights acquired by conquest, Grotius expressly limits those possessed by the sovereign relative to conquered territory. In developing the subject he naturally speaks of re-conquered territory that originally had belonged to the victorious sovereign, and this introduces a discussion of the rights of subjects to enjoy their quondam privileges upon the expulsion of the enemy from their lands. This right of restoration to their former estate, Grotius terms the Right of Postliminium. This is the "Right accruing to anyone in consequence of his returning home from Captivity. Among the many things which fall within the scope of the Right, lands in particular attract our attention. For as Pomponius observes, upon the expulsion of an enemy, lands naturally revert to their former masters."[47]

[47] Grotius, "*Rights of War and Peace.*" Univ. Classics Library, pp. 551–555.

Vattel, in his Law of Nations, lays special emphasis upon this Right of Postliminium. He specifically states that "the sovereign is bound to protect the persons and property of his subjects, and to defend them against the enemy. When, therefore, a subject or any part of his property has fallen into the enemy's possession, should any fortunate event bring them again into the sovereign's power, *it is undoubtedly his duty to restore them to their former condition;* to re-establish the persons in all their rights and obligations, and give back the effects to the owners. In a word, to replace everything on the same footing on which it stood previous to the enemy's capture."[48]

Penn, of course, makes no mention of the Right of Postliminium, and illustrates his contention by citing the fact that a merchant vessel that had been in possession of the enemy for twenty-four hours, was considered, upon recapture, as the King's prize. Now, strange to say, merchant vessels and movables were not subject to this Right of Postliminium, and Penn, who had studied law, should have been aware of that fact. His attempt to strengthen his case by the use of such an example, simply reveals another one of his efforts to impose upon Baltimore.

The decision of the Committee on Trade and Plantations in 1685, forever deprived Baltimore of the Lower Counties. Nevertheless, the outraged proprietor continued his efforts to regain their possession, and for many years affairs continued unsettled. In 1708, he petitioned Queen Anne to set aside the order in council of 1685, and to restore him to his former estate. This evoked a counter petition from Penn, whereupon Baltimore's plea was dismissed. In 1709, Baltimore presented a second petition, but this also was dismissed, and the order in council of 1685 was commanded to be put into execution. Unfortunately for Charles Calvert, this command was never enforced. Inasmuch as the order confirmed his

[48] *Law of Nations*, 391–392; Chitty ed. 1857. Italics are the author's.

northern boundary to be the fortieth degree, its execution would have saved him the loss of many millions of acres. In 1724, after years of border warfare, Charles, Lord Baltimore, entered into an agreement with the widow of William Penn that no one should be disturbed in the possession of his land, and that for eighteen months no land near the boundaries of the respective provinces should be surveyed or taken up. But the death of Mrs. Penn, and the lax administration of the governors of each province, rendered this agreement nugatory. In July, 1731, Baltimore petitioned George II to direct a settlement of the boundaries, and on May 10, 1732, was signed the important agreement between Charles, fifth Baron Baltimore, and John, Thomas, and Richard Penn, sons of the great Quaker leader.

By the terms of the instrument, the southern boundary of Delaware was to "begin at the place on the said map called Cape Henlopen, which lies south of Cape Cornelius; thence to run to the exact middle point of the peninsula; thence northerly until it became tangent on the west to the periphery of a circle drawn at a distance of twelve miles from the town of Newcastle; thence a line to be run due north until it comes into the same latitude as fifteen miles due south of the most southern part of the city of Philadelphia; and thence due west."[49]

It can readily be seen that, on the part of Baltimore, this agreement was puerile. It deprived him of a strip of land twenty miles in width on his northern boundary. Moreover, the false location of Cape Henlopen aggravated his misfortune. The order in Council of 1685 had recognized Baltimore's claim to lands as far north as the fortieth parallel, and the surrender of territory for which his grandfather had so tenaciously contested, and for which Cresap and the Maryland borderers had endured so many hardships, is amazing. The false location of Cape Henlopen is, indeed, a puzzling factor, and seems to confirm the contention of the Maryland historians that

[49] Hall, *Maryland Palatinate*, pp. 152–153.

the map attached to the agreement of 1732 was a forged one.

It was asserted by the Penns that Baltimore himself produced this map, and that if he suffered from any mistakes contained therein, he alone was responsible. If it be true that Baltimore did produce this map, then, of course, he was liable for his own carelessness. But there is a strong suspicion that Baltimore was imposed upon in the conference of 1732, and that his surveyor-general never saw that famous chart.

In the first place, the fortieth parallel had for many years been regarded as the northern boundary of Maryland and its exact location was clearly shown by Augustine Herman's map of 1670. In the map attached to the agreement of 1732, all lines of latitude and longitude were carefully omitted, and the only line that is visible is the heavy red one that is supposed to mark the boundaries of Pennsylvania, Maryland, and the Lower Counties.

The location of Cape Henlopen is of especial importance. On Herman's map, that headland is clearly indicated at the *mouth* of Delaware Bay. On the map of 1732, *Cape Henlopen has been placed twenty-five miles farther south*, and the former Cape Henlopen is labelled Cape Cornelius. It seems to be a plain case of forgery, and admirably served its purpose of defrauding Baltimore.[50]

In the suit in chancery, the Penns stoutly defended the location of Cape Henlopen as shown on this forged map, and Lord Hardwicke in his opinion of 1750, adopted the contention of the Penn family and claimed that the cape received its name from a Dutch word signifying "to disappear" or "run away." This name, they claimed, was bestowed because Cape Henlopen was a false cape, and upon approach seemed to recede. Baltimore, on the other hand, endeavored to prove that the word originally meant "to flow in," and, therefore, the cape was located at the mouth of Delaware Bay.

[50] Both maps are given in the appendix to Hall's *Maryland Palatinate*.

As usual, the arguments adduced by the Penns are ingenious, but they carry little weight. The original settlement made by the Dutch at Swaanendael, was located at the "Horekill," which is but a few miles above the true Cape Henlopen. This was the settlement, that according to the claim of the Duke of York and William Penn, confirmed the Dutch title to Delaware. But this colony extended over only a few acres, and was soon destroyed by the Indians.

Again, in the deeds of enfeoffment of August, 1682, the Hoarkills (or Whorekills) were styled "Capin Lopen." This would seem to sustain Baltimore's side of the case, for the Hoarkills is a creek very near the present Cape Henlopen. It is true that the order in council of 1685 describes the ocean as the eastern boundary of the province, but this may be easily explained by the lack of exact geographical knowledge which obtained in the seventeenth century. The precise point where the bay widens to become the "eastern sea" it would not be easy to determine.

Another point that strengthens Baltimore's contention that the true location of Cape Henlopen was at the mouth of Delaware Bay, is the act of Union passed at Chester, December 7, 1682. This measure, which united Pennsylvania and the Lower Counties, reads as follows: "Forasmuch as all that tract of land lying on the west side of the river Delaware, beginning from twelve miles above Newcastle northward, *and extending to the south cape, commonly called Cape Henlopen, making the mouth of the Bay of Delaware,* of late divided into three counties, and called by the names of Newcastle, Jones and Whore-Kills."[51] Therefore, it seems undeniable that the map of 1732 was devised solely for the purpose of defrauding the fifth Baron Baltimore, and the spirited defense made by the Penns relative to the location of Cape Henlopen on this map, apparently points to such a conclusion.

[51] Shepherd, *Proprietary Government in Penna.*, p. 140.

In 1733, Charles, fifth Baron Baltimore, visited Maryland, and on being advised of the fraud that had been perpetrated by the Penns, refused to carry out the agreement. The commissioners appointed to execute this agreement met on November 24, 1733, but after much wrangling accomplished nothing. On August 8, 1734, Baltimore presented a petition to the King, praying that he be put into possession of the Delaware. This was referred to the Board of Trade, which reported to a committee of the council, that although Delaware was apparently included in the charter of 1632, it had been for many years in the possession of the Penns. An order in council was then issued in May, 1735, recommending that the case be tried in a court of equity.

Owing to numerous delays, the final decision was not rendered until May 15, 1750. Inasmuch as the suit was primarily instituted to compel the execution of the articles of agreement of 1732, the decision rendered by the Lord Chancellor is hardly surprising. After calling attention to the attempt of Lord Baltimore to evade the agreement, he dwells at length upon the expense incurred by the Penns in the settlement of the Lower Counties. He then ordered the articles of agreement to be fulfilled, and directed that Baltimore pay the entire cost of the suit as ascertained by a master in chancery.

Even this did not terminate the controversy, for during the next ten years continued disagreement prevented the execution of the order of the court. At length in 1760, commissioners were appointed to settle the question of the boundary lines, though the actual work was done by two expert surveyors, Charles Mason and Jeremiah Dixon. In 1767, the northern boundary of Maryland was fixed at 39° 44′, and extended 230 miles from the tangent line. In 1769, an order in council confirmed the proceedings of the commissioners, thus bringing to a close one of the most remarkable boundary controversies in American colonial history.

CHAPTER IV

THE CHARACTER OF WILLIAM PENN

Few subjects in our colonial history have stirred up so violent a controversy as that which has marked the estimates of the character of William Penn. In the eyes of his devoted biographers he was little less than a saint; in the opinion of Macaulay, he was "a poor, shallow, half-crazed creature." Doubtless the founder of the great commonwealth of Pennsylvania, had many sterling qualities. His adherence to a sect amongst the most despised in England, and his many imprisonments because of his religious principles, are proofs of a sincere attachment to the Quaker belief. But there is ground for the adverse criticism that has been directed against him. In the pursuit of his aims he was often disingenuous, and, as Channing observes, "There is much in his career that is hard to reconcile with the uprightness of character and scrupulousness of dealing which one has a right to expect in a leader of a religious sect."[52] Therefore, because of its bearing upon this inquiry, we shall summon a few witnesses in order to ascertain the character of Penn, whose statements concerning his territorial rights have contributed in no small degree to form the opinion of even impartial historians.

It is certain that Penn often figured in the rôle of intriguer. Seventeenth century England was not noted for its spiritual atmosphere, and at the court of Charles II many forms of vice and corruption flourished. But Penn, though he mingled freely with the carefree crowd that thronged the corridors at Whitehall, scrupulously refrained from their wild excesses. Prudence dictated his every action, and prudence combined with rare mental sagacity, enabled him to perceive his objective clearly, and to strive vigorously for its attainment.

[52] *History of the U. S.* Vol. II, p. 102.

His original feelings toward the Catholic Church, and his subsequent modification of them, reveal a truly marvellous skill in trimming his sails to meet the varying winds of circumstance. At first bitterly hostile to every doctrine and tradition of that Church, in the last years of the reign of Charles II, Penn experienced a remarkable change in his religious convictions, and with the accession of his friend, James, Duke of York, this former arch-enemy of the "Church of Rome," became in turn a powerful friend of Catholics, and in his writings supported their claims to toleration.

That this change was made because of the known friendship of Charles II, especially in his last years, for his Catholics subjects, and of the fact that his brother James, Duke of York, had long been a convert to their faith, can hardly admit of doubt. The essential tenets of the Friends were diametrically opposed to the teachings of the Catholic Church, and it is hard to believe, that Penn, like Saul of Tarsus, should suddenly have the scales fall from his eyes and hear the divine command. The convictions of a lifetime are not so easily disturbed, and Penn's policy from the last years of Charles to the expulsion of James, clearly shows that he had an eye to his own interests. He was, in fact, a thorough opportunist, as a short examination into his conduct from 1678 to 1688 will demonstrate.

In 1670, William Penn published his first direct attack on the Catholic Church. It was a pamphlet entitled, "A Seasonable Caveat Against Popery," and seems to have been principally concerned with a refutation of the charge that he, and the Quakers in general, were "Jesuits" in disguise. The language of this pamphlet, which is scurrilous in the extreme, shows an intense hatred of all things Catholic. "Her doctrine is the doctrine of devils, and her priests though forbidden to marry, keep as many strumpets as their purse or lust shall please; while the revenue of the Pope is enhanced by licensing under his

own seal the resorts of these debased women.''[53] He next denounces the doctrine of transubstantiation, and attempts to prove that the Fathers of the Church openly justified fornication, perjury, and theft.

In the course of the next few years, Penn's opinions seemed to have remained the same, for in 1679, when Titus Oates pretended to discover a Popish plot, Penn immediately subscribed to the popular belief, and wrote a pamphlet setting forth his views. This brochure, ''An Address to Protestants of all Persuasions,'' is another diatribe directed against the ''Papists''; in it the author pleads for greater sympathy and coöperation between the warring Protestant sects. His theme is that Protestantism must present a solid front to the insidious attacks of Rome, or the fruits of the Reformation will be lost.

The year 1679 marks a critical time in English history. The King had been forced to dissolve Parliament and a new election was at hand. The Whigs, or the party in opposition to the King, were gaining strength with every day, and Penn, in his hatred of all things ''Popish,'' became a rampant Whig and supported Algernon Sydney, a candidate for Parliament from the district of Guilford.

In this campaign, Penn's main contribution was his pamphlet, ''England's Great Interest in the Choice of a New Parliament.'' From it we learn of his belief in the Popish plot, for he strongly advises the voters to choose ''only sincere Protestants.'' Sydney, though he received the majority of votes, was ruled out on a technicality, and at the next election, Penn again rallied to his support.

In the second campaign Penn wrote another pamphlet which was intended to support the Whigs, but which was really a repetition of the old plea for coöperation among Protestants, and effective resistance to the schemes of the ''Jesuits.'' He went even so far as to devise a test affirmation that would completely exclude all Catholics from any office of trust under the government. This test, Penn

[53] S. G. Fisher, *The True William Penn*, p. 155.

suggested, should be administered to everyone in England; all persons being obliged to subscribe to it on Ash Wednesday, the day "when the Pope curses all Protestants." This, and the concomittant circumstances, should be borne in mind when one considers Penn's subtle advocacy of the measures of James II.

In 1685, the Duke of York ascended the throne as James II, and Penn's chameleon mind immediately adapted itself to this new change of circumstances. Besides, the boundary dispute was before the committee of the Privy Council awaiting their decision, and it behooved him to act with all circumspection. He had always maintained friendly relations with James, and at Penn's request that worthy monarch commanded the Committee on Trade and Plantations to render a speedy decision. That it should be in favor of Penn, was, of course, understood. In 1685, the aforementioned judgment was given, and Penn came into possession of the Lower Counties. This was the first royal *quid pro quo* of James II, and thereafter Penn was a violent partisan.

Religious convictions appear to have been conveniently forgotten, and Penn the extreme Protestant, suddenly began to regard the Catholics with marked benevolence. When one remembers that less than five years previously he had enthusiastically supported Sydney and even went so far as to suggest a test affirmation that would exclude all Catholics from office, then, indeed, must one view his change of sentiments with something like suspicion.

That Penn at this very time entertained grave fears concerning the "pretensions" of the Catholics is clearly shown in a private letter to his steward at Pennsbury. "In France," he says, "not a meeting of Protestants left, they force all, by not suffering them to sleep, to conform; they use drums, or fling water on the drowsy till they submit or run mad. Such as fly and are caught are sent to the galleys to row—believe me, it is an extraordi-

nary day, such as has not been since generations ago. *Read this to weighty friends and magistrates in private.*"[54] It is rather easy to discern where Penn's secret sympathies lay, and the admonition contained in the last sentence admirably illustrates the "prudent Mr. Penne."

The eminent Quaker was so flattered by his position of intimacy with James II, and his head was so filled with schemes of self-aggrandizement, that he was ready to lend his active support to whatever measure James might favor. As an admirer aptly phrases it: "He was in too deep with the King to permit him to drop the important public position in which he had suddenly found himself since the accession of James."[55]

In 1686, in a second letter to his steward, Penn implores "the Lord to keep us here in this *dark* day. The King has discharged all Friends by a general pardon, and is courteous to us, though as to the Church of England things seem pinching. Several Roman Catholics get much into places in the army, navy, and court."[56] Can it be doubted that Penn suspected James of designs for re-establishing the Catholic Church in England? Yet Penn continued his staunch support of James, and never publicly wavered in his allegiance. In the latter part of the year 1686, Penn undertook a mission to William of Orange, and endeavored to exact a promise from that shrewd statesman that if he succeeded to the throne of England, the test laws excluding dissenters and Catholics would be repealed. Penn's duplicity was so evident that it only served to make William and his court regard him with contempt.

But the culmination of Penn's masquerading was not reached until the spring of 1687. This ushered in the famous "Declaration of Indulgence," and henceforth all dissenters and Catholics were placed upon an equal foot-

[54] S. M. Janney, *Life of Wm. Penn*, p. 259. Italics are mine.
[55] S. G. Fisher, *The True William Penn*, p. 166.
[56] S. M. Janney, *Life of Wm. Penn*, p. 271.

ing with the members of the Established Church. Undeniably the measure was a mighty stride along the road to progress and religious liberty, and any one who honestly rallied to its support cannot be too highly praised. But a careful consideration of Penn's early life, inevitably leads one to the conclusion that in this case, as in many others, he appreciated the character of *The Double Dealer*.

The sentiments contained in the pamphlet, "Good Advice to Roman Catholics and Protestant Dissenters," are purely pinchbeck, and do not ring true. The Catholics have ceased to be the dangerous people that they were in 1679-1680, and now they are "sensible people," who know "their own interest," and would not do what the majority in England disapproved of. Moreover, the King had given his word that only a few Catholics would be placed in office, and Penn, a student of constitutional questions, professed to be thoroughly satisfied with merely the royal promise.

But not content with writing a pamphlet in support of the Declaration of Indulgence, Penn afterwards traveled over the kingdom speaking in its favor. Now in 1679 he had supported Algernon Sydney, the Whig candidate for Parliament. As a means of assisting his friend, Penn wrote the aforementioned brochure entitled, "England's Great Interest in the Choice of this New Parliament," in which he strenuously maintained that "no law could be made or abrogated in England except by the Parliament, and that anything else was tyranny." In other words, a Declaration of Indulgence was tyranny in 1679, while in 1687 it had grown to be a sovereign remedy against Parliamentary oppression. Was there ever a greater change in a shorter space of time?

Immediately after the failure of Sydney in the election of 1680, Penn had written an acrimonious pamphlet which he styled, "One Project for the Good of England." Throughout this remarkable contribution, the "Papists" are bitterly attacked for their "design" to capture the

government; and it is asserted that Catholics had a different theory of government; that they believed in despotism; and that "if they got into power they would wreck the liberties of England." Indeed, it must be remembered that Penn was so anxious to prevent the dreaded sect from holding office that he devised a new test affirmation that would effectively bar from office any adherent of that religion.

And now in the brief space of eight years, these "dangerous people" are no longer wolves but the merest lambs; in fact, they are "sensible people" who would not for a moment think of conspiring to control the government. Of course, Penn's whole policy is transparent. Self-interest is but poorly concealed, and egoism is plainly the force that controlled most of his actions. It is incredible that Penn's later professions could have been sincere, and his conduct during those eight years reveals a man who would allow nothing to stand between him and the object he sought to attain.

When we come to consider Penn's administration of his province, it is evident that most of his biographers have been led astray by traditional estimates of his character, and that his liberal views so warmly praised by many writers, are difficult to discover. From his intimate association with the Duke of York, Penn must have absorbed many of his exalted ideas of prerogative. On his return to England in the summer of 1684, he delegated his authority as governor, to a provincial council. By the charter of Pennsylvania, the council had the important privilege of initiating legislation, but from the very beginning this right was obstinately contested by the Assembly. In Maryland the same question had arisen, and Cecilius Calvert had gracefully relinquished this prerogative. Not so with Penn.

Greatly annoyed at the contest which the Assembly was waging for their liberty, Penn reduced the number of councillors to five, whom he denominated commis-

sioners. His letter of instructions to them will serve as an index to at least one side of his character—his love, and in many respects, his abuse of authority. Fully conscious of his influence with King James II, Penn determined not to brook further resistance by the Assembly. His instructions to the commissioners ordered them to rule with a "high hand," and not to permit the deadlocks in legislation that had so often occurred between the two houses. They had the power "to enact, annul or vary laws as if he himself were present." It is certain that he had ceased to feel bound by the charter, which had conferred upon the freemen equal powers in legislation. But this was not all. Rebuking the Commissioners for their neglect of "Duty," he "went on in his instructions like an Eastern despot."[57] Next he threatened to dissolve the whole frame of government, and what power the Assembly would have had under the proposed new frame, one can easily imagine. As a final pronouncement, he ordered the Commissioners to declare at the next meeting of the Assembly, that all laws except the Constitution were abrogated, and that new laws would have to be passed. When one bears these facts in mind, it is rather easy to understand Penn's tactics in his dealings with Lord Baltimore. He was a dangerous man to oppose, and this was especially so during the reign of his friend, James II.

In the complicated situation which existed in New Jersey, Penn's conduct was also questionable. On March 18, 1674, Berkeley sold his interest in the Jerseys to John Fenwick and Edward Byllinge, both of whom were Quakers. By this transaction, William Penn is introduced to the student of American history. Shortly after this purchase, the two owners quarreled, and the dispute was referred to Penn for arbitration. He awarded Byllinge nine tenths of the territory, and Fenwick was given the remaining tenth, together with a considerable

[57] S. G. Fisher, *True True William Penn*, p. 344.

sum of money. Byllinge, however, soon afterwards became bankrupt, and made over his interest to Penn, Gawen Lawrie, and Nicholas Lucas, to be held in trust for his creditors. Fenwick then resolved to colonize his one tenth, and in order to obtain the necessary means, leased his part of the province to John Elbridge and Edmund Warner. This lease, which was for one thousand years, virtually deprived Fenwick of all control within his own tenth.

In the meantime, Penn, Lucas, and Lawrie, were settling the affairs of the Byllinge estate, and to expedite matters it was suggested that the whole of West Jersey be placed under the control of the trustees for Byllinge. Thereupon, Elbridge and Warner transferred to Penn and his associates, their interest in the tenth that had been leased to them by Fenwick. After this transaction had been completed, Penn, Lawrie, and Lucas proceeded to re-convey Fenwick's tenth to Elbridge and Warner in fee simple, thus preventing a reversion to Fenwick and heirs. "This," says Tanner, "was sharp practice, though perhaps legal."[58]

Fenwick vehemently protested against this theft of his share, but was finally won over by Penn to a "peaceful settlement," and in 1682-83, Elbridge and Warner released their interests in the province, when Penn became sole owner of the tenth. This is only one of the many transactions in which the founder of Pennsylvania appears in an unfavorable light.

In the matter of encroachments upon the territory which he knew to lie within the boundaries of Maryland, Penn is likewise open to censure. In 1701, he granted fifteen thousand acres to some Quaker families on the condition that they would settle in Cecil County. "Nine-tenths of this large tract was south of the present Maryland line, and the whole of it twenty miles south of Baltimore's northern boundary."[59]

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[58] *Province of New Jersey*, p. 11.
[59] Archer, *Maryland Fund Publications*. No. 30, p. 98–99.

Again, after the decision of 1685 had defined the boundaries of Maryland, Penn persuaded a Welsh colony that had settled at Radnor, to leave their homes and occupy a tract of thirty thousand acres which was laid out along the Delaware-Maryland boundary line, yet five thousand acres of this tract lay within the limits assigned to Maryland. In a word, the desire of Penn to seize territory which he knew to belong to Lord Baltimore, hardly points to a strict observance of the seventh commandment.

CHAPTER V

CONCLUSION

Penn's intolerance, which appears to be established by the preceding chapter, does not, indeed, disqualify him as an interpreter of the charter provisions concerning his territorial rights, but it does justify the inquirer in seeking confirmation of that proprietary's claims. It has always counted much in his favor that the early annals of Pennsylvania are unstained by record of persecution on account of religion. It has been shown, however, that the adoption of a policy of intolerance would not have advanced his interests, and to them Penn was never indifferent.

In the matter of political liberty at least one of his admirers has found in Penn's correspondence proof of his despotic principles. A natural consequence of such principles would be an indifference to the rights of others, and this is the burden of the charge against Penn.

It is possible that Penn's connection with certain transactions in the Jerseys did not transcend the limits of the law, though one authority describes it as "sharp practice." Still more sharp was the grant to his Quaker colonists of a great tract within the limits of even the diminished Maryland that we know. When, in 1685, the northern boundary of that province had been determined by authority, his representations persuaded settlers from Radnor, in the latitude of Philadelphia, to occupy the lands of his neighbor.

In judging the merits of the Pennsylvania-Maryland boundary dispute, the first fact to remember is that after examining Penn's application for a grant of land, and being inclined to promote it, the Lords of Trade and Plantations were embarrassed by the holdings of Charles Calvert and the Duke of York. On that occasion Sir John Werden, representative of the latter, protested

against the inclusion of Newcastle and the Lower Counties in any patent to be granted to Penn. Baltimore's agent, on the other hand, declared that the Susquehannah Fort was the northern boundary of Maryland. There was, therefore, no sufficient foundation for Penn's later claim that the parallel was supposed to fall lower than it actually does. At any rate, in 1680 the Lords of Trade and Plantations had no doubt on that subject. But the loss of Philadelphia being threatened, Penn believed it necessary to put a new interpretation upon the terms of his grant.

In September, 1681, in a letter Penn cautioned half a dozen citizens of Cecil and Baltimore counties against the further payment of quit-rents to Lord Baltimore. Their holdings, Penn informed them, were within his grant, and, as if this assurance were not convincing, they were promised that his rule would be found "easy, free, and just." The connection between his rule and his rights is by no means clear. One entirely ignorant of the career of William Penn might regard this attempt to unsettle the established order in an adjacent province as an emanation of innocence. On it, however, contemporary records turn other lights and with their assistance an experience of the world or an acquaintance with history seems to justify the conclusion that his interference was carely considered and his first step artfully planned.

King Charles II had ordered a speedy adjustment of of the boundaries between Penn's province and that of Lord Baltimore, but an early settlement did not suit the immediate plans of the former, for he sent from England a friend, who made a secret survey of the Upper Chesapeak, or at any rate made one without consulting Calvert. The results were not satisfactory and, for a time, it was feared that it would be necessary for Penn to purchase a port from Lord Baltimore. William Markham, a kinsman of the Pennsylvania proprietary, then adopted and persevered in a policy of delay. When finally he

consented to meet Calvert, he had lost the glasses of his sextant, but the use of a borrowed instrument convinced him that Upland (Chester, Pa.) is some twelve miles south of the fortieth parallel. Though observations were discontinued, Penn was not inactive because until measurements were resumed he was engaged in acquiring the Lower Counties. In his situation this was easily accomplished.

The Duke of York, ignoring the territorial rights of Calvert, caused the Lower Counties to be occupied and declared that he would remain in possession until title had been determined. It was later admitted by the attorney of the Duke that his rights were conveyed not by a royal charter but by royal acquiescence. Notwithstanding the lack of a title, the Duke, by deeds of enfeoffment, disposed of this territory to William Penn, and, knowing that the title was defective, obtained, in March, 1683, from his brother Charles, a grant of the three Lower Counties. Under this conveyance Penn continued to hold the tract. In a word, William Penn acquired from the Duke of York his title to the territory that we know as Delaware. To it, as is well known, the Duke himself had no legal title, and Penn's assumption of governmental powers over it was therefore without warrant in law. In October, 1682, he quietly took possession and at once invited Calvert to a conference.

At the meeting of 1682, which took place in Anne Arundel County, Maryland, Penn produced a royal letter, prepared no doubt at his request and designed to promote his interests. This communication recommended "that Lord Baltimore take Watkins Point as his southern boundary, and as soon as possible set down his northern boundary with Penn by an admeasurement of the two degrees in his patent, sixty miles to a degree, from the southern boundary as already settled." As the Maryland charter made no mention of "two degrees," Baltimore declined to have its provisions superseded by a

royal letter. Then Penn made other proposals from any of which he expected an advantage, but Lord Baltimore firmly insisted upon his charter rights. Though the former, who was prepared "to do the thing that was right and just," did not lack friendly phrases, it is certain that he was wanting in frankness.

When the patent was granted to the second Lord Baltimore, 1632, it was believed that each degree of latitude contained sixty miles, whereas at the time that the present controversy arose it was known that each degree is a little more than sixty-nine miles. By taking it for granted that Maryland was two degrees in width, and estimating each at sixty miles, the equivalent early in the seventeenth century, Penn had hoped to gain twenty miles. But the width of Maryland, as determined by its charter, was originally the zone between the fortieth parallel and Watkins Point. Unable to agree at either the conference held in Maryland, or a later one which took place in Delaware, it became necessary to submit the dispute to the Lords of Trade and Plantations. In the hearing before that committee, both parties were represented by counsel. The main point then to be determined was whether in 1632 the Dutch possessed the lands claimed by Penn. Chiefly on the answer to this question the decision was based. While the case was pending, Charles II died. On his accession King James II, hitherto an intimate friend of Penn, pushed the matter to a prompt settlement. In 1685, the tribunal decided "that the land intended to be granted by the patent to Baltimore was only that which was uncultivated and inhabited by savages." It was held that the disputed tract had been occupied and cultivated before 1632, and that it had always been regarded as a colony distinct from Maryland. Therefore, it was concluded to divide, by a line from the latitude of Cape Henlopen, north to the fortieth parallel, the territory between Chesapeak Bay on the west and the Delaware River, Delaware Bay, and the Atlantic Ocean

on the east. The lands lying west of this line were awarded to Calvert, while those to the east of it were to belong to his Majesty.

The brief existence of Swaanendael did not interrupt in the slightest degree the rule of savages in Delaware. In another point the Committee of the Lords of Trade gave an official approval to the claim of Calvert, namely, that his northern boundary was the parallel of forty degrees. In a word, by this decision, Calvert had lost Delaware (the Lower Counties), but, what was more important, had been confirmed as to his northern boundary. This part of the decision, too, was destined to prove of no advantage to Calvert, for the order was not executed.

Posting themselves on this partial success, Penn and his heirs renewed the contest for the land to the north and to the west of Newcastle. In 1732, Charles, fifth Baron Baltimore, signed away all his rights thereto. In this transaction one sees, that the Penns had power not only to move the court but that, by means of a map, which appears to have been forged, they succeeded in changing the location of Cape Henlopen. The philology of the Penns proved, at least to their own satisfaction, that the name Henlopen signifies *to disappear* or to *run away.* Baltimore, on the other hand, attempted to show that the word originally meant *to flow in,* and thence inferred that the cape was situated at the mouth of Delaware Bay.

Discovering on his arrival in America that he had been imposed upon, the fifth Baron Baltimore refused, in 1733, to carry out his agreement with the Penns and in the following year petitioned the King to be put in possession of Delaware. Two years later the case was referred to a court of equity. By influencing the decision of the Lord Chancellor, adverse possession seems to have assisted the Penns. Thereafter the matter dragged its slow length along until 1760, when commissioners were appointed to settle the boundary line. Their determination, based upon the recommendation of Charles Mason

and Jeremiah Dixon, finally set at rest the ancient dispute.

The authenticity of the map of 1732, the use of which deprived Calvert of a large tract, remains one of the few unsettled questions connected with the dismemberment of Maryland. On this subject, the writer believes no important discovery is seriously to be expected. It is believed that the origin of the circle around Newcastle, a point that perplexed Archer, has been satisfactorily explained in the preceding pages.[61] Penn's reasoning which would restrict the width of Maryland to one degree, has been shown to be insufficient, and, in our opinion, his established character justifies the conclusion that most of his statements concerning the title to that part of his province below the fortieth parallel require the support of witnesses less interested and more credible.

[61] See introduction, p. 6.

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VITA.

The author was born at Fredericksburg, Texas, December 9, 1890. He completed a course of eight years at the Brookland Public School, and prepared for college at the Emerson Institute, of Washington, D. C. He matriculated in the School of Letters in the Catholic University, October 5, 1908. In 1912 he was graduated with the degree of Bachelor of Arts, and the following year proceeded to the degree of Master of Arts in the Faculty of Philosophy.

In the fall of 1913 he returned to the Catholic University to pursue a course leading to the degree of Doctor of Philosophy. The work done thereafter was under the direction of the Department of American History in which the major course was followed. The first minor was in the Department of English Language and Literature, and the second in the history of Modern Europe.

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